



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 19, 1998

Mr. John J. Rivas
Staff Attorney
Texas State Board of Medical Examiners
P.O. Box 2018
Austin, Texas 78768-2018

OR98-2450

Dear Mr. Rivas:

You ask whether the Open Records Act (the "Act") requires the Texas State Board of Medical Examiners (the "Board") to publicly disclose physicians' social security numbers. A prior decision of this office determined that the Act requires the Board to release social security numbers obtained as part of the application process for medical licenses. Open Records Letter No. 93-396 (1993). The letter held that social security numbers are not protected from required public disclosure based on the common-law right to privacy nor under statutory law. *Id.* (finding inapplicable 42 U.S.C. § 405(c)(2)(C)(vii)(I), V.T.C.S. art. 4495b, §§ 3.05(d), 4.05(d)). You now ask that we revisit our privacy determination in light of the proliferation of the crime of "identity theft." You additionally ask that we consider whether section 231.302 of the Family Code prohibits the Board from publicly disclosing physicians' social security numbers. Your request was assigned ID# 118896.

You inform us that, according to an article in the May 1998 issue of *The Financial Privacy Report*, a social security number is "the gateway to all financial information" of the holder. You state that

[a]n identity thief can fraudulently obtain credit cards, welfare checks, government bonds, medical benefits, etc., simply by using the victim's social security number and name. A more sophisticated identity thief can purchase cars, boats and even get a job under a victim's name and social security number. Others have committed serious crimes using an innocent person's identity.

You seem to argue that because of the potential for criminal use of the social security numbers, the numbers should remain private. We acknowledge that there is a potential for the criminal use of these numbers. *See* 42 U.S.C. § 408(a)(7); *see also* *U.S. v. Silva-Chavez*,

888 F.2d 1481 (5th Cir. 1989) (construing 42 U.S.C. § 408(a)(7) as proscribing false representation of social security number for any purpose). However, the purposes of a requestor are not relevant to a determination of whether requested information must be disclosed. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 675 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The Act prohibits a governmental body from inquiring into the reason for requesting information. Gov't Code § 552.222.

The common-law right to privacy protects information from public disclosure if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The proliferation of criminal theft may demonstrate that the release of the social security numbers is highly objectionable to a reasonable person as does the fact that physicians strongly oppose the public disclosure of their social security numbers. Nevertheless, the common-law privacy test is not met, as we believe the numbers are not highly intimate and embarrassing information. *See Industrial Foundation*, 504 S.W.2d 668; *see also* Open Record Decision Nos. 373(1983), 254 (1980).

Section 231.302 of the Family Code, which was enacted in 1995, requires the Board to obtain the social security number of all applicants for a license to practice medicine. Section 231.302(e) specifically makes confidential a social security number provided under section 231.302.¹ You ask whether section 231.302 prohibits the Board from releasing social security numbers if the Board was collecting some of the numbers for other purposes prior to the enactment of the statute.

By its terms, section 231.302(e) makes confidential only a social security number "provided under this section." Thus, a social security number that was not provided under section 231.203 is not confidential under subsection (e). We presume that, had the legislature intended subsection (e) to cover more than the numbers provided under section 231.302, such as numbers the Board collected prior to the enactment of section 231.302, it would not have limited the coverage as it did.²

¹Under a 1990 amendment to the Social Security Act, the physicians' social security numbers are confidential if the Board obtained or maintains them pursuant to any law enacted on or after October 1, 1990. 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994).

²Section 4.05(c) of the Medical Practices Act, V.T.C.S. article 4495b, provides that "[a]ll complaints, adverse reports, investigation files, other investigation reports, and other investigative information in the possession of, received or gathered by the board or its employees or agents relating to a licensee, an application for license, or a criminal investigation or proceedings are privileged and confidential and are not subject to discovery, subpoena, or other means of legal compulsion for their release to any one other than the board or its employees or agents involved in licensee discipline. Thus, social security numbers the Board collected in connection with a disciplinary proceeding may be excepted from disclosure by section 552.101 of the Government Code in conjunction with section 4.05(d) of the Medical Practice Act. *See* Open Records Letter No. 93-396 at 2 (1993).

In conclusion, the Board must withhold from public disclosure physicians' social security numbers provided under Family Code section 231.302. Additionally, the Board must withhold from public disclosure physicians' social security numbers that the Board obtained or maintains pursuant to any law enacted on or after October 1, 1990. Unless another exception is applicable, the Board must release all other physician social security numbers.³

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/ch

Ref.: ID# 118896

³We recommend that you seek legislative assistance to address the confidentiality of physicians' social security numbers generally.